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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

MCI COMMENTS

MCI TELECOMMUNICATIONS CORPORATION

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Summary

MCI urges the Commission to give priority attention to the right of PCS licensees and other providers of commercial mobile services to compensation for the termination of traffic originated on local exchange carriers' (LECs') networks. This issue of "mutual compensation" is one that is of vital importance to the viability of PCS as a competitive service alternative.

A broad interpretation of "mobile service" is necessary if MCI and other prospective PCS entrants are to have adequate flexibility to provide the range of services desired by consumers. The installation of "fixed access units" to provide service to consumers in their homes on an ancillary basis to the commercial mobile service offering properly falls within the scope of "mobile service."

The Commission should interpret the term "commercial mobile service" consistent with the Conferees' stated intent that the definition of "commercial mobile services" encompass all providers who offer their services to broad or narrow classes of users, so as to be effectively available to a substantial portion of the public. Commission proposals to permit broadband PCS licensees to elect "private carrier" status appear to have been rendered obsolete by the new statutory framework, which authorizes the Commission to forbear from most Title II regulation in appropriate cases. In this context, there is no longer any need for a "private carriage" election for commercial mobile service providers.

An expansive interpretation of "interconnected service" to encompass "store-and-forward" and other indirect means of

interconnection would best achieve comparable regulatory treatment for all entities providing similar commercial mobile services, regardless of the type of technology employed. A narrow interpretation of the term "private mobile service" should be adopted; classification of services as "private mobile services" should be the exception, not the rule.

The dispatch prohibition applicable to commercial mobile service providers who are classified as common carriers should be lifted. Artificial restrictions on the service offerings of commercial mobile service providers would only serve to limit competition and, with rare exception, disserve the public interest.

The previously established physical interconnection rights of Part 22 common carriers should be extended generally to all commercial mobile service providers. All commercial mobile service providers should be required to establish physical interconnection with other mobile service providers. In general, the Commission should promote interconnection by providers of commercial mobile services with all other common carriers to facilitate delivery of communications via the "network of networks."

The Commission should clearly state that, if a PCS provider desires an interconnection arrangement that a LEC makes available to any other carrier or customer, the LEC may not withhold it on the grounds that it is not "of a type reasonable for [a] PCS system."

Providers of commercial mobile services should have full co-carrier status with the local exchange carriers. This extends well

beyond the arrangements typical in the mobile services industry today, the assignment of numbers, and the provision of a limited range of interconnection offerings. The evolution of PCS and other services into competitive alternatives to the landline local exchange will not be realized if the deficiencies of the current LEC-cellular interconnection environment are permitted to persist and to extend to PCS.

The Commission should rule that CMS providers' interconnection responsibilities include the provision of access to their mobile location databases (HLR and VLR, or their equivalent) to inter-exchange carriers. MCI recommends that the Commission consider expanding the scope of such access -- to require commercial mobile service providers to provide routing information access to all common carriers.

Finally, MCI believes that all commercial mobile service providers should be subject to basic equal access requirements. The Commission's equal access requirements for providers of commercial mobile services should be based upon the existing LEC rules, but they need not be identical. All commercial mobile service providers should be required to give their customers access to the long distance provider of the customer's choice, at the customer's request.

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MCI COMMENTS

MCI Telecommunications Corporation (MCI), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking (Notice) in the above-captioned proceeding.

I. Introduction

The implementation of the regulatory treatment provisions of the Omnibus Budget Reconciliation Act of 1993 (Budget Act) is an important precursor to the licensing of Personal Communications Services (PCS). MCI is pleased to offer its comment concerning the issues raised in the Notice.

II. Discussion

A. Mutual Compensation.

The question of whether providers of PCS and other commercial mobile services are entitled to compensation for the termination of traffic originated on local exchange carriers' (LECs') networks is of vital importance to the viability of PCS as a competitive service alternative. In the absence of "mutual compensation," commercial mobile service providers must pay LECs

to terminate mobile-originated traffic, but they receive no compensation for LEC-to-mobile calls. This inequity must be eliminated if PCS and other commercial mobile services are to realize their true competitive potential.

The Commission's experience in the cellular interconnection arena dates back to the era when McCaw and the cellular affiliates of the largest LECs had not yet consolidated their control of systems which serve the vast majority of cellular subscribers. This experience provides an ample basis for a more active Commission role with respect to mutual compensation as PCS and other new commercial mobile services are licensed.

MCI agrees with the Commission's statement, in para. 71 of the Notice, that there is "no distinction between the previously established interconnection rights of Part 22 licensees and those of commercial mobile service providers." In its May, 1987 Declaratory Ruling on cellular interconnection, 2 FCC Rcd 2910 (1987), clarified on recon. 4 FCC Rcd. 2369 (1989), the Commission explained its previous rulings on this matter as follows:

> In establishing the reasonable interconnection standard, we also expected telephone companies and cellular carriers to observe the principle of mutual compensation for switching. That is, we expected each entity to recover the costs of switching traffic for the other entity's network.

Declaratory Ruling, 2 FCC Rcd at 2915. The Commission continued:

> we believe the principle of mutual switching compensation should apply to Type 2 but not Type 1 service...Under Type 2...the cellular carrier owns the switch, enabling it to originate outgoing calls and terminate incoming calls.

Id. The Commission cited the Cellular Report submitted by Telocator to the effect that "reciprocal switching agreements between telephone companies and Type 2 connected cellular carriers have already been reached in some communities". Id. at 2916. However, the Commission clearly signaled its intention that:

> Should telephone companies impose charges on a cellular carrier that differ from the charges they impose on each other, there may be discrimination under Section 202(a) of the Act. In that event, we will require the BOC to make an affirmative, documented showing of why it has imposed differing charges on the two carriers.

Id. Despite the Commission's pronouncements on these matters, mutual compensation does not exist to any significant extent in the cellular industry today.

In the Report and Order in this proceeding, the Commission should reiterate its policy of mutual compensation and expressly apply it to interconnection between PCS operators and LECs that each have their own switching. In addition, the Commission should affirmatively declare that LEC interconnection charges imposed on PCS operators that differ from interconnection charges LECs impose on one another may violate Section 202(a) of the Act and would be grounds for federal intervention.

B. Definitions.

1. Mobile Service. MCI submits that the addition to the preexisting statutory definition of "mobile services" in section 3(n) of the Act of a specific reference to PCS should be interpreted broadly as a recognition that PCS encompasses the full range of services described in the Commission's Notice of Proposed Rulemaking in the PCS proceeding, including ancillary fixed

communications. See Notice of Proposed Rulemaking, GEN Docket No. 90-314, 7 FCC Rcd 5676, 5751 (1992) [Appendix A, proposed Rule Section 99.5]. Market trials of PCS, including GTE's Tampa trial of Tele-Go, have shown that customers want to use PCS devices in their homes, as well as throughout the community. A broad interpretation of "mobile service" is necessary if MCI and other prospective PCS entrants are to have adequate flexibility to provide the range of services desired by consumers. The installation of "fixed access units" to provide service to consumers in their homes on an ancillary basis to the commercial mobile service offering properly falls within the scope of "mobile service."

2. Commercial Mobile Service. MCI submits that the Commission should interpret the term "commercial mobile service" in a manner consistent with the Conferees' stated intention

> ...to ensure that the definition of "commercial mobile services" encompasses all providers who offer their services to broad or narrow classes of users so as to be effectively available to a substantial portion of the public.

See Conference Report discussion of Section 332(d). Commission proposals to permit broadband PCS licensees to "elect" private carrier status appear, in large measure, to be inconsistent with the new statutory framework. As the Commission observes in note 68 of the Notice, the statute makes it clear that cellular-type services will be classified as "commercial mobile services" -- it is the nature of the service, rather than the declared intent of the provider, that is relevant for classification purposes.

MCI submits that the alternative proposal to permit licensees to allocate a portion of their spectrum for offering on a "private carrier" basis, with the remainder available for "commercial mobile services," is likewise inconsistent with the new statutory framework. In each of the decisions cited in note 67 of the Notice, the Commission reviewed the relevant market conditions before permitting licensees to elect "private carrier" status in lieu of "common carrier" status. The regulatory treatment provisions of the Budget Act require the Commission to conduct a similar, if not identical, analysis in determining the scope of forbearance. The principal form of relief granted to "private carriers" -- the right to negotiate individualized prices with customers -- may well be made available to providers of "commercial mobile services" via forbearance from general tariffing requirements. Thus, there appears to be no need to grant providers of commercial mobile services a "private carrier" option. If the Commission should allow broadband PCS applicants to elect "private carrier" status for any portion of their spectrum, those licenses should be granted subject to a restrictive condition to the effect that any rendition of commercial mobile service on the spectrum designated for private services would be grounds for revocation of the entire license.

3. Interconnected Service. Interconnection should be interpreted broadly. Services which are interconnected with the public switched network should be treated as commercial mobile services if they meet the other definitional criteria. Of the

two alternative approaches discussed in the Notice at paras. 17-21, the Intelsat approach is the one that is consistent with the intent of Congress. The alternative Data Com approach, which treats "store-and-forward" systems as "not interconnected," could result in the adoption of such technologies by commercial mobile service providers seeking "regulatory parity" with their competitors who currently use "store-and-forward" systems. A more expansive interpretation of "interconnected service" to encompass "store-and-forward" and other indirect means of interconnection would achieve "parity" directly. For example, an expansive definition of "interconnected service" should result in regulatory parity between the wide-area data services of RAM Mobile Data (mentioned in the Notice at n. 50) and the cellular digital packet data (CDPD) offerings of cellular carriers.

4. Private Mobile Service. A narrow interpretation of the term "private mobile service" should be adopted. Although there are services (such as those provided by traditional private radio dispatch systems) which do not fall within the scope of commercial mobile service, classification of services as "private mobile services" should be the exception rather than the rule.

C. Regulatory Classification of Existing Services.

Dispatch Service. The Notice (para. 42) seeks comment on whether existing common carriers who are to be classified a providers of commercial mobile services should be permitted to provide dispatch service. MCI believes that all commercial

service providers should be allowed to provide dispatch service. With the recent reallocation of over 160 MHz of spectrum to personal communications services, the spectrum scarcity rationale for the dispatch restriction in cellular is no longer tenable. As a general rule, artificial restrictions on the types of services that commercial mobile service providers may offer should be eliminated, as they serve to limit competition and thereby are inconsistent with the public interest.

D. Right to Interconnection.

1. Interconnection Rights and Obligations. MCI concurs with the Commission's assessment that the previously established physical interconnection rights of Part 22 common carriers should be extended generally to all commercial mobile service providers. MCI believes that all commercial mobile service providers should be required to establish physical interconnection with other mobile service providers. Moreover, given the broad scope and continuing applicability of the Commission's general interconnection authority under Section 201, the Commission should adopt a policy of strongly encouraging providers of commercial mobile services to interconnect with other common carriers (including long distance carriers) upon request, so that parties seeking resort to the administrative processes outlined in Sections 201 and 332(c)(1)(B) may be kept to a minimum.

2. Scope of Interconnection Rights and Obligations.

i. LEC-PCS Interconnection. The Commission has tentatively concluded that, as in the landline environment, it is not possible to separate LEC provision of physical interconnection for commercial mobile services along jurisdictional lines. Notice, at para. 71. This conclusion is a reasonable one, and it supports the proposed preemption of state regulation of the right of PCS carriers to interconnect with LECs and of the types of interconnection to be provided to PCS carriers.

MCI recommends that the Commission clarify its interconnection policy in light of the potential for dominant LECs and their affiliates to manipulate the interconnection process to the disadvantage of PCS licensees. The Commission's proposal that "PCS providers be entitled to obtain interconnection of a type that is reasonable for the PCS system" may be interpreted by the LECs as the Commission's endorsement of LEC efforts to create a limited menu of interconnection offerings for PCS licensees. The Commission should clearly state that, if a PCS provider desires an interconnection arrangement that a LEC makes available to any other carrier or customer, the LEC may not withhold it on the grounds that it is not "of a type reasonable for [a] PCS system."[1/]

Providers of commercial mobile services should have full co-carrier status with the local exchange carriers. True co-carrier

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[1/] Under the circumstances, it is MCI's position that such an approach would be a violation of Section 201(a) of the act, which requires a carrier to furnish service upon reasonable request.

status extends well beyond the arrangements typical in the mobile services industry today, the assignment of numbers and the provision of a limited range of interconnection offerings. While numbers and interconnection are important, the growth of commercial mobile services and the evolution of these services into competitive alternatives to the landline local exchange will not be realized if the deficiencies of the current interconnection policies are permitted to persist and to extend to PCS.

In para. 75 of the Notice, the Commission requests comment on its tentative conclusion that it is not necessary to preempt state and local regulation of the LECs' charges for interconnection offerings to providers of intrastate PCS. MCI views the Commission's conclusion as a reasonable one. MCI also supports the Commission's proposal to reexamine this issue at a later time if it is shown that state and local regulation of LECs' intrastate interconnection rates is exercised in such a way as to preclude development of interstate PCS.

3. CMS Interconnection Obligations. In landline telephony, calls delivered by the originating LEC to an IXC are accompanied by information (normally the dialed geographic number) sufficient to permit the IXC to transport the call to the appropriate destination. In commercial mobile services, the interexchange carrier requires access to additional information to ensure that calls are properly routed to their destinations.

As MCI explained in its cellular equal access petition (RM-8012, filed June 2, 1992), IXC access to information stored in

the mobile service providers' databases (the Home Location Register (HLR) and the Visited Location Register (VLR)) is both necessary and appropriate to enable IXCs to provide their customers with intelligent-network-based services wherever the customers travel. For the reasons stated in MCI's November 1992 Comments in response to the PCS Notice of Proposed Rulemaking, the Commission should rule that CMS providers' interconnection responsibilities include the provision of access to their mobile location databases (HLR and VLR, or their equivalent) to interexchange carriers. MCI recommends that the Commission consider expanding the scope of such access, to require commercial mobile service providers to provide routing information access to all common carriers.

In para. 71 of the Notice, the Commission seeks comment on whether commercial mobile service providers should be required to interconnect with other mobile service providers. MCI believes that a requirement that every provider of commercial mobile services offer interconnection to other commercial mobile service providers should be given serious consideration. CMS-to-CMS interconnection would promote interoperability and facilitate roaming.

4. Equal access. In the introductory discussion of forbearance at para. 59 of the Notice, the Commission describes three markets that must be considered: commercial mobile service providers may provide (1) local exchange service, (2) exchange access services to interexchange carriers and (3) interexchange

services. The Commission expresses its belief that incumbent commercial mobile service providers and new PCS entrants will compete not only with one another, but also with other existing providers of each of those types of services, so that none will possess market power and that forbearance from detailed regulatory oversight would be appropriate.

MCI believes that the Commission should approach with caution forbearance from every aspect of common carrier regulation. This is particularly true with respect to equal access. The Commission's recently-adopted PCS rules do not require any local exchange carrier (including the Bell Operating Companies) to establish a separate subsidiary for the provision of PCS. The Commission, in conducting an earlier analysis of similar factors, concluded that the public interest would be served by extension of equal access requirements to all LECs; the grant of a broadband PCS license to an unseparated LEC PCS provider does nothing, in and of itself, to eliminate the LEC bottleneck.

Nearly eighteen months ago, MCI filed a petition for rulemaking seeking the adoption of equal access requirements for cellular carriers. At that time, the cellular industry was dominated by ten large carriers. During the pendency of that petition, the aggregation of cellular interests in the hands of the largest companies has continued apace, and AT&T has sought approval to acquire control of McCaw, the largest single cellular operator. The need for the cellular equal access rulemaking requested by MCI has only increased with the passage of time.

MCI believes that all commercial mobile service providers should be subject to basic equal access requirements. If, as PCS licenses are awarded and systems are placed in operation with a result that the Commission's efforts to foster competition would have been successful, there will be several viable independent competitors in identifiable geographic and product markets. At that time, a further rulemaking to consider whether modification of equal access obligations or forbearance would serve the public interest.

The Commission's equal access requirements for providers of commercial mobile services should be based upon the existing LEC rules, but they need not be identical. For example, the Commission might consider permitting joint marketing of local commercial mobile services and long distance services, if multiple independent providers of those services make imposition of that restriction unnecessary to protect consumers. All commercial mobile service providers should be required to give their customers access to the long distance provider of the customer's choice, at the customer's request.

III. Conclusion

WHEREFORE, MCI requests that the Commission take these comments into account in reaching its decisions in this important telecommunications policy proceeding.

Respectfully submitted,

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Dated: November 8, 1993

CERTIFICATE OF SERVICE

I Vernell V. Garey, hereby certify that on this 8th day of November, 1993, copies of the foregoing **"COMMENTS"** were served by first-class mail, postage prepaid upon the parties on the list, except as otherwise indicated.

***BY HAND**

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